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Campbell Electric & Control, Inc. and International Brotherhood of Electrical Workers, Local Union 584, AFL-CIO. Case 17-CA-19066

July 28, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge filed by the Union on March 17, 1997, the General Counsel of the National Labor Relations Board issued a complaint on May 12, 1997, against Campbell Electric & Control, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On June 30, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On July 2, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated June 4, 1997, notified the Respondent that unless an answer were received by June 18, 1997, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Muskogee, Oklahoma, has been an electrical contractor engaged in the building and construction industry. During the 12-month period ending April 30, 1997, the Respondent

in conducting its business operations described above, provided services valued in excess of \$50,000 for Domino's Pizza, Whittingill Disposal, Koch Industries, Muskogee Precision Machine, Lakeland Shopping Center, EZ Mart, Precision Machine, Pumpkin Patch Daycare, and Southside Shopping Center, enterprises within the State of Oklahoma which are directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the Eastern Oklahoma Chapter, National Electrical Contractors Association (the Association) has been an organization composed of various employers engaged in the construction industry, one purpose of which is to represent its employer-members and nonmember employers who agree to be bound in negotiating and administering collective-bargaining agreements with the Union. At all material times, the Respondent has authorized the Association to represent it in negotiating and administering collective-bargaining agreements with the Union.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees performing electrical construction work within the jurisdiction of the Union on jobsites of Respondent located in the following counties in the State of Oklahoma: Adair, Atoka, Cherokee, Coal, Craig, Creek, Haskell, Delaware, Hughes, Latimer, Laflore (except Braden, Pocola and Spiro townships), Mayes, McIntosh, Muskogee, Notawa, Okfuskee, Okmulgee, Osage (east of Highway No. 18), Ottawa, Pawnee (east of Highway No. 18), Payne (Eagle, Indian, Mound and Union townships only), Pittsburg, Pushmataha, Rogers, Sequoyah (west of Atkins, Gans, Hanson, Long and Redlands Townships), Tulsa, Wagoner and Washington; excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act, and all other employees.

On or about December 10, 1996, the Respondent entered into a Letter of Assent-A, whereby it agreed to recognize the Association as the collective-bargaining representative of the unit for all matters contained in or pertaining to the current and any subsequent approved inside labor agreement between the Association and the Union, unless timely written notice was given. The Respondent, an employer engaged in the building and construction industry, granted recognition to the

Union as the exclusive collective-bargaining representative of the unit without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in a collective-bargaining agreement, which is effective for the period December 18, 1996, through May 31, 2000. For the same period, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.

About February 21, 1997, the Respondent withdrew recognition of the Union as the limited exclusive collective-bargaining representative of the unit. Since about the same date, the Respondent has failed to continue in effect all the terms and conditions of the agreement described above by, inter alia, failing to follow the exclusive referral procedure for employment set forth in article VI of the current collective-bargaining agreement between the Association and the Union described above, failing to pay the wage rates set forth in article IV of the collective-bargaining agreement, and failing to remit to the appropriate fringe benefit funds the fringe benefit contributions on behalf of employees required by article V of said collective-bargaining agreement. The Respondent engaged in the above conduct without the Union's consent. The terms and conditions of employment affected by the conduct described above are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By withdrawing recognition of the Union and failing to continue in effect all the terms and conditions of the December 18, 1996 - May 31, 2000 collective-bargaining agreement, including the exclusive referral, wage, and benefit fund provisions of the agreement, the Respondent has failed and refused to bargain collectively and is continuing to fail and refuse to bargain collectively with the Union as the limited exclusive collective-bargaining representative of the unit, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act since about February 21, 1997, by withdrawing recognition from the Union and refusing to continue in effect all the terms and conditions of the 1996-2000 agreement, including the exclusive referral, wage and fringe benefit provisions of the agreement, we shall order the Respondent to

recognize the Union as the limited exclusive collective-bargaining representative of the unit and comply with the terms and conditions of the 1996-2000 agreement, including the exclusive referral, wage and fringe benefit provisions.

In addition, in order to remedy the Respondent's failure to pay contractual wage rates, we shall order the Respondent to make whole the unit employees for any loss of earnings they may have suffered as a result of the Respondent's unlawful conduct. Backpay will be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Further, in order to remedy the Respondent's failure to make contractually required fringe benefit contributions to the various funds, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). The Respondent shall also reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.¹

Finally, in order to remedy the Respondent's unlawful failure to comply with the exclusive referral provisions of the contract, we will order a reinstatement and backpay remedy for those applicants who would have been referred to the Respondent were it not for the Respondent's failure to abide by the agreement. *J. E. Brown Electric*, 315 NLRB 620 (1994). The Respondent will have the opportunity to introduce evidence on reinstatement and backpay issues at the compliance stage with respect to any employees not specifically alleged in the complaint. Id. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Campbell Electric & Control, Inc., Muskogee, Oklahoma, its officers, agents, successors, and assigns, shall

1. Cease and desist from

¹ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

(a) Withdrawing recognition from the Union as the limited exclusive collective-bargaining agent of the unit during the term of the collective-bargaining agreement with the Union.

(b) Failing to continue in effect all the terms and conditions of the collective-bargaining agreement with the Union, including the exclusive referral, wage and fringe benefit provisions of the agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and bargain with the Union as the limited exclusive collective-bargaining representative of the employees in the following unit and comply with the terms and conditions of the 1996-2000 agreement, including the exclusive referral, wage and fringe benefit provisions of the agreement:

All employees performing electrical construction work within the jurisdiction of the Union on jobsites of Respondent located in the following counties in the State of Oklahoma: Adair, Atoka, Cherokee, Coal, Craig, Creek, Haskell, Delaware, Hughes, Latimer, Laflore (except Braden, Pocola and Spiro townships), Mayes, McIntosh, Muskogee, Notawa, Okfuskee, Okmulgee, Osage (east of Highway No. 18), Ottawa, Pawnee (east of Highway No. 18), Payne (Eagle, Indian, Mound and Union townships only), Pittsburg, Pushmataha, Rogers, Sequoyah (west of Atkins, Gans, Hanson, Long and Redlands Townships), Tulsa, Wagoner and Washington; excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act, and all other employees.

(b) Make whole, with interest, the unit employees for any loss of earnings or benefits they may have suffered as a result of its failure to adhere to the wage and fringe benefit provisions of the 1996-2000 agreement since February 21, 1997, in the manner set forth in the remedy section of this decision.

(c) Offer immediate and full employment to any applicants who would have been referred to the Respondent were it not for the Respondent's failure to abide by the exclusive referral provisions of the 1996-2000 agreement since February 21, 1997, and make those applicants whole, with interest, for any loss of earnings suffered as a result of the Respondent's unlawful conduct, as set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports,

and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Muskogee, Oklahoma, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 17, 1997.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 28, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT withdraw recognition of the Union as the limited exclusive collective-bargaining agent of the

unit during the term of the collective-bargaining agreement effective December 18, 1996, through May 31, 2000.

WE WILL NOT fail or refuse to continue in effect all the terms and conditions of the 1996–2000 agreement with the Union, including the exclusive referral, wage and fringe benefit provisions of the agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and bargain with the Union as the limited exclusive collective-bargaining representative of the employees in the following unit and comply with the terms and conditions of the 1996–2000 agreement, including the exclusive referral, wage and fringe benefit provisions:

All employees performing electrical construction work within the jurisdiction of the Union on our jobsites located in the following counties in the State of Oklahoma: Adair, Atoka, Cherokee, Coal, Craig, Creek, Haskell, Delaware, Hughes, Latimer, Laflore (except Braden, Pocola and Spiro townships), Mayes, McIntosh, Muskogee, Notawa,

Okfuskee, Okmulgee, Osage (east of Highway No. 18), Ottawa, Pawnee (east of Highway No. 18), Payne (Eagle, Indian, Mound and Union townships only), Pittsburg, Pushmataha, Rogers, Sequoyah (west of Atkins, Gans, Hanson, Long and Redlands Townships), Tulsa, Wagoner and Washington; excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act, and all other employees.

WE WILL make whole, with interest, the unit employees for any loss of earnings or benefits they might have suffered as a result of our failure to adhere to the wage and fringe benefit provisions of the 1996–2000 agreement since February 21, 1997.

WE WILL offer immediate and full employment to any applicants who would have been referred to us were it not for our failure to abide by the exclusive referral provisions of the 1996–2000 agreement since February 21, 1997, and make those applicants whole, with interest, for any loss of earnings suffered as a result of our unlawful conduct.

CAMPBELL ELECTRIC & CONTROL, INC.

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT withdraw recognition of the Union as the limited exclusive collective-bargaining agent of the unit during the term of the collective-bargaining agreement effective December 18, 1996, through May 31, 2000.

WE WILL NOT fail or refuse to continue in effect all the terms and conditions of the 1996–2000 agreement with the Union, including the exclusive referral, wage and fringe benefit provisions of the agreement.

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WE WILL make whole, with interest, the unit employees for any loss of earnings or benefits they might have suffered as a result of our failure to adhere to the wage and fringe benefit provisions of the 1996–2000 agreement since February 21, 1997.

WE WILL offer immediate and full employment to any applicants who would have been referred to us were it not for our failure to abide by the exclusive referral provisions of the 1996–2000 agreement since February 21, 1997, and make those applicants whole, with interest, for any loss of earnings suffered as a result of our unlawful conduct.

CAMPBELL ELECTRIC & CONTROL, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

8600 Farley Street, Suite 100, Overland Park, Kansas 66212-4677, Telephone 913–967–3005.